



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XD255]

Magnuson-Stevens Fishery Conservation and Management Act; General Provisions for Domestic Fisheries; Applications for Exempted Fishing Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; request for comments.

SUMMARY: During the June 2023 Pacific Fishery Management Council (Council) meeting, the Council made several recommendations to NMFS regarding applications received in 2022 and 2023 for exempted fishing permits (EFPs). All EFP applicants request exemptions from regulatory provisions pertaining to the use of authorized gear types under the Fishery Management Plan for U.S. West Coast Fisheries for Highly Migratory Species (HMS FMP). The applicants propose to test the effects and efficacy of using alternative fishing practices to harvest swordfish and other HMS off of the U.S. West Coast. The applications include requests to fish with a range of gear configurations including modified standard and linked daytime deep-set buoy gear (DSBG), night-set buoy gear, and extended linked buoy gear. The Council reviewed these applications and made recommendations to NMFS at their June and September meetings in 2022 and 2023. NMFS has determined that these applications warrant further consideration and is requesting public comment on them.

DATES: Comments must be submitted in writing by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: You may submit comments on this document, identified by NOAA-NMFS-2023-0116, by any of the following methods:

Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to <https://www.regulations.gov> and enter NOAA-NMFS-2023-0116 in the Search box. Click on the “Comment” icon, complete the required fields, and enter or attach your comments.

Mail: Submit written comments to Chris Fanning, NMFS West Coast Region, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802. Include the identifier “NOAA-NMFS-2023-0116” in the comments.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record, and will generally be posted for public viewing on <https://www.regulations.gov> without change. All personal identifying information (*e.g.*, name, address, *etc.*), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Chris Fanning, NMFS, West Coast Region, 562-980-4198, Chris.Fanning@noaa.gov.

SUPPLEMENTARY INFORMATION:

On May 8, 2023, NMFS published a final rule implementing Amendment 6 to the HMS FMP (88 FR 29545). These regulations, which became effective on June 7, 2023, authorize standard and linked DSBG as an additional gear type for catching swordfish and other HMS in federal waters off of California and Oregon and include various gear specification requirements (*e.g.*, prohibiting vessels from deploying more than 10 pieces of standard or linked DSBG, in total, at one time), operational requirements (*e.g.*, prohibiting vessels from deploying their gear at night), and geographic area restrictions

(e.g., prohibiting fishing with DSBG in federal waters within the Southern California Bight without a limited entry permit). See 50 CFR 660.715.

At its September 2022 meeting, the Council deferred a recommendation on 4 applications¹ seeking increases in the number of pieces of DSBG simultaneously deployed from the current limit of 10 pieces, until a later date when more information would be available.² In June of 2023, the Council further recommended that NMFS not issue EFPs for testing simultaneous deployment of more than 10 pieces of standard or linked DSBG or night-set buoy gear (NSBG), including the four applications submitted to the Council in 2022 for this purpose,¹ and an application from Perez, Krebs, and Mintz considered at the June 2023 meeting,³ until the authorized fishery has been operational for 2 seasons.⁴

Also in June 2023, the Council recommended that NMFS:

- Extend Mr. Nathan Perez’s NSBG EFP for another 2 years.⁵
- Approve the 2022 PIER EFP application for Extended-Linked Buoy Gear

(XLBG) with 100 percent observer coverage until NMFS determines enough data have been collected, with a minimum of 10 observed sets per vessel.⁶

Additionally, for consideration at the September 2023 Council Meeting, the Council requested Mr. Krebs clarify that his request is for his own EFP rather than a modification of another EFP.⁷ Mr. Krebs confirmed that his request is for his own EFP,

¹ <https://www.pcouncil.org/documents/2022/08/i-3-attachment-2-revised-efp-application-from-k-honings.pdf/>.

<https://www.pcouncil.org/documents/2022/08/i-3-attachment-3-efp-application-from-k-jacobs-t-gomez.pdf/>.

<https://www.pcouncil.org/documents/2022/08/i-3-attachment-4-revised-efp-application-from-s-mintz.pdf/>.

<https://www.pcouncil.org/documents/2022/08/i-3-attachment-5-revised-efp-application-from-n-perez.pdf/>.

² <https://www.pcouncil.org/september-2022-decision-summary-document/>.

³ <https://www.pcouncil.org/documents/2023/06/j-3-attachment-1-efp-application-from-nathan-perez-donald-krebs-and-stephen-mintz.pdf/>.

⁴ <https://www.pcouncil.org/june-2023-decision-summary-document/>.

⁵ <https://www.pcouncil.org/documents/2023/06/j-3-attachment-3-request-from-nathan-perez-to-extend-his-current-nsbg-efp-and-include-donald-krebs.pdf/>.

⁶ <https://www.pcouncil.org/documents/2022/08/i-3-attachment-6-efp-application-from-pier.pdf/>.

⁷ <https://www.pcouncil.org/documents/2023/06/j-3-attachment-2-efp-application-from-donald-krebs.pdf/>.

and the Council subsequently recommended that NMFS issue an EFP to Mr. Krebs to fish night-set buoy gear.

At this time, NMFS is requesting public comment on the DSBG EFP applications discussed above. NMFS will take the Council's comments into consideration along with public comments on whether to issue these EFPs. Aside from the regulatory exemptions being sought for the proposed activities in the applications described above, vessels fishing under an EFP would be subject to all other regulations implemented at 50 CFR part 660, subpart K and 50 CFR part 300, subpart C, including measures to protect sea turtles, marine mammals, and seabirds.

NMFS will consider all public comments submitted in response to this Federal Register notice prior to issuance of any EFP. Additionally, NMFS will analyze the effects of issuing EFPs in accordance with the National Environmental Policy Act and NOAA's Administrative Order 216-6A, as well as for compliance with other applicable laws, including Section 7(a)(2) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*), which requires the agency to consider whether the proposed action is likely to jeopardize the continued existence and recovery of any endangered or threatened species or result in the destruction or adverse modification of critical habitat.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 29, 2023.

Jennifer M. Wallace,

Acting Director, Office of Sustainable Fisheries,

National Marine Fisheries Service.